McDermott
Will&Emery

Boston Brussels Chicago Düsseldorf London Los Angeles Miami Munich
New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Christine M. Gill
Attorney at Law
cgill@mwe.com
202.756.8283

March 7, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers; WT Docket No. 05-265

Dear Ms. Dortch:

Nearly eighteen months ago, the Commission initiated the current proceeding on the roaming obligations of providers of Commercial Mobile Radio Services. As the numerous submissions made in this proceeding demonstrate – including comments, reply comments, economic studies, and over a year's worth of *ex parte* submissions and presentations – virtually every CMRS provider, regardless of size, agrees that automatic roaming is an integral and important component of the CMRS marketplace and that the availability of roaming services is vital for US consumers and a competitive CMRS market. The record has also highlighted a stark divide between the roaming experiences and concerns of the nationwide carriers on the one hand and of the non-nationwide regional and rural carriers on the other.

Both the nationwide and non-nationwide carriers agree on some key points – namely, that, absent market abuses, commercially-negotiated agreements should continue to serve as the basis for the provision of intra-carrier roaming services, and that there should be an effective mechanism for resolving individual disputes between carriers. This tenet is set forth in the "CMRS Roaming Principles" endorsed by over twenty-five regional and rural carriers (including SouthernLINC Wireless).[1] A copy of the CMRS Roaming Principles is attached for reference.

---

[1] / *See Ex Parte* Letter of SouthernLINC Wireless, filed September 20, 2006 (unless otherwise noted, all citations herein are to filings submitted in WT Docket No. 05-265). This letter was filed on behalf of SouthernLINC Wireless and twenty-four other CMRS providers who are signatories to the letter.

However, in order for the Section 208 complaint process to serve as an effective avenue for addressing roaming issues, the complaint process itself must be strengthened and revised. The CMRS Roaming Principles set forth specific measures that would strengthen the complaint process and make it an effective tool for preserving and promoting effective CMRS competition and protecting US consumers.

Support for Revising and Strengthening the Complaint Process for CMRS Roaming Has Grown

The broadly-supported CMRS Roaming Principles set out three key revisions that should be made to the Section 208 complaint process in order to ensure that this process is an effective avenue for redress:

- **Adoption of a rebuttable presumption of technical feasibility:** If a carrier is already providing roaming service to other carriers using the same air interface (*e.g.*, CDMA, GSM, or iDEN), then the roaming service will be presumed to be technically feasible.

- **Adoption of a rebuttable presumption of a reasonable rate:** There should be a presumption that a just and reasonable wholesale rate for roaming cannot be higher than the carrier's best retail rate or average retail rate per minute.

- **Adoption of the FCC's "Rocket Docket" for roaming complaints:** In order to ensure that roaming disputes are resolved in a fair, efficient, and timely manner, roaming-related complaints should automatically be placed on the Enforcement Bureau's Accelerated Docket under Section 1.730 of the Commission's Rules.

Since the time these proposals were first advanced over a year ago, they have gained increasing support within the CMRS industry. While much of this support initially came from non-nationwide regional and rural carriers, even the nationwide carriers have come to recognize the need to reform the complaint process for roaming and the substantial benefits that such reforms would bring to consumers and to the industry.

Significantly, in an *ex parte* filing submitted in this docket on May 31, 2006, nationwide carrier T-Mobile presented its own proposals for reforming the Section 208 process to effectively address roaming complaints.[2] In many respects, T-Mobile's proposals track very closely to the approach endorsed by the CMRS Roaming Principles while providing greater detail as to specific procedures that should be adopted by the Commission. T-Mobile should be commended both for its effort and for the thought it put into these proposals.

---

[2] / *Ex Parte* Letter of T-Mobile, filed May 31, 2006 (hereinafter "T-Mobile *ex parte*").

However, as discussed below, SouthernLINC Wireless is concerned that certain aspects of T-Mobile's proposals, if adopted as presented, would convert the complaint process into an even more insurmountable barrier for most CMRS carriers, thus preventing this process from becoming an effective tool for ensuring the availability of automatic roaming for all US consumers.

T-Mobile Offers Some Positive Proposals Regarding the "Rocket Docket"

T-Mobile reiterated a recommendation first made in its reply comments by calling for the use of the Commission's Accelerated Docket to resolve roaming-related complaints,[3] a recommendation that has also been made and endorsed by SouthernLINC Wireless and over twenty-five other CMRS carriers through the CMRS Roaming Principles. T-Mobile then presented more detailed procedures that should be adopted in order to accommodate roaming complaints in the "Rocket Docket." Quoting T-Mobile, the following amendments should be made:

- **Fast-track presumption.** There should be a rebuttable presumption that complaints regarding roaming and roaming agreements are fast-tracked onto the Rocket Docket.

- **More intense, mandatory settlement discussions.** There should be a mandatory 21-day supervised settlement period. Having settlement discussions aggressively supervised by Commission staff will prompt parties to be more open to negotiations and compromise.

- **Expedited discovery subject to nondisclosure and confidentiality requirements.** Expedited discovery of parties' roaming agreements with third parties should be permitted. Such agreements should be considered proprietary subject to the nondisclosure and confidentiality requirements of Section 1.731 of the Commission's Rules.

- **Delegated authority.** The Commission staff should be granted express authority to interpret and decide roaming complaints under Title II of the Communications Act of 1934, as amended (the "Act").

- **Timing.** Roaming complaints subject to the Rocket Docket should be decided within 90 days of filing. This period is slightly longer than the 60 day period now in the Rocket Docket rules in recognition that roaming complaints can be complex. The Commission staff should have authority to extend that period by another 60 days for good cause (e.g., some roaming complaints may be highly technical). Roaming complaints that are removed from the Rocket Docket should

---

[3] / T-Mobile *ex parte* at 2.

be decided within 180 days of filing, with the option to extend that period by another 120 days for good cause.

- **Appeals/reconsideration.** Decisions regarding roaming complaints should be subject to the Commission's existing rules regarding the timing for filing applications for review and petitions for reconsideration. However, any decisions acting on an application for review or petition for reconsideration (regardless of whether the underlying decision was through the Rocket Docket) should be within 130 days of filing the application for review or petition for reconsideration.[4]

SouthernLINC Wireless agrees with T-Mobile that these proposed amendments to the Commission's formal complaint rules would ensure more timely and efficient resolution of roaming-related complaints and fully supports the proposals set forth above. In particular, SouthernLINC Wireless believes that the implementation of mandatory settlement discussions under close Commission supervision (which echoes the statement in the CMRS Roaming Principles that carriers be required to negotiate in good faith) could lead to the resolution of many roaming complaints through negotiation rather than through a formal Commission decision.

SouthernLINC Wireless also notes that allowing expedited discovery of parties' roaming agreements (subject to confidentiality and nondisclosure requirements) would substantially increase the efficiency and fairness of both the settlement discussion and complaint review process.

T-Mobile's Other Proposals Regarding the Complaint Process Should Be Rejected

In addition to proposing amendments to the procedural aspects of the Commission's formal complaint rules, T-Mobile also proposed standards that it believes should be applied in the complaint context. According to T-Mobile, the Commission should "provide some more focused decisional guidelines to staff, especially if roaming complaints are decided in a Rocket Docket procedural setting."[5] T-Mobile then asserted that there is no need for the adoption of detailed regulations similar to those adopted for wireline incumbent local exchange carriers, but rather that the Commission should adopt a policy statement to provide staff the necessary guidance.[6]

---

[4] / T-Mobile *ex parte* at 3.

[5] / T-Mobile *ex parte* at 4.

[6] / *Id.* In support of this position, T-Mobile asserted that "[t]here has been no showing that any CMRS providers have economic market power in any reasonably defined market for roaming services." *Id.* This statement completely ignores the findings to the contrary contained in economic studies submitted in this proceeding that were prepared by Dr. David S. Sibley, Professor of Economics at the University of Texas at Austin and the former chief economist for

While SouthernLINC Wireless agrees with the need to provide staff with appropriate decisional guidelines for roaming complaints, SouthernLINC Wireless believes that a policy statement is insufficient and that such guidance must come through a rule for two reasons. First, ambiguity and uncertainty currently cloud roaming obligations and these problems can only be eliminated through clear rules, not policy statements. The Commission must establish that carriers are obligated to provide in-bound roaming to any requesting carrier with a technologically compatible air interface. SouthernLINC Wireless believes that the policy statement approach could be easily disregarded as a "suggestion" rather than a requirement, thus leaving smaller carriers in the same position they find themselves now. This approach would also not provide sufficient guidance for staff to be able to resolve tough cases in an efficient and expedient manner. By the same token, there is no need to adopt "ILEC-style" regulations or cost models, which, if anything, would impede the complaint process.

Rather, SouthernLINC Wireless believes that the level of certainty required by Commission staff would be most effectively achieved through the adoption of a clear, straightforward rule that also establishes easy-to-apply "bright line" presumptions – such as those set forth in the CMRS Roaming Principles – to be applied in roaming complaints, all of which would be rebuttable.[7] Such rules, combined with the use of easy-to-obtain publicly available information, would provide certainty and clarity not only to Commission staff, but to the parties as well, thus enabling the complaint process to proceed as efficiently as possible.

Second, clearly articulated rules will minimize the number of complaints brought before the Commission because the Commission will be left to deal only with situations that are intractable or ambiguous. In settling questions regarding roaming obligations, the Commission's objective should be to create an environment in which carriers, knowing what the boundaries are, can come to agreements amongst themselves in most cases. Clearly articulated rules – not policy statements – are the mechanisms for creating such an environment. Otherwise, parties are much more likely to have to resort to the Commission's complaint process.

---

the US Department of Justice's Antitrust Division (*see* Reply Comments of Leap Wireless, Attachment A; Reply Comments of Centennial Wireless, Attachment), and by Dr. R. Preston McAfee, Professor of Business, Economics, and Management at the California Institute of Technology. *See* Comments of SouthernLINC Wireless, Attachment B; Reply Comments of SouthernLINC Wireless, Attachment B.

[7] / For example, a CDMA carrier seeking roaming would not be required to prove technological compatibility with another CDMA carrier – compatibility would be presumed because the carriers use the same technology. However, a defendant carrier could overcome this presumption by proving that there are, in fact, valid technological barriers to the provision of roaming to the requesting carrier.

- **T-Mobile's Proposed "Threshold" Presumption is Not Permissible Under the Communications Act and Has No Basis in Economic or Market Theory**

As a threshold matter, T-Mobile proposed that the roaming arrangements of a defendant carrier in a roaming complaint proceeding be presumed to be just and reasonable and/or not unjustly or unreasonably discriminatory if there is another facilities-based CMRS provider in the same geographic area using the same network technology (*e.g.*, CDMA, GSM, iDEN).[8] According to T-Mobile, this presumption "would recognize that the complainant would have an alternative to the [defendant] for entering into a roaming agreement."[9] In addition, T-Mobile would require "convincing evidence of collusive, exclusionary conduct" in order for this presumption to be rebutted.[10] This proposal not only runs counter to basic economic and market theory but would also eviscerate the entire complaint process by creating a new initial entry "test" for complainants to overcome before they could qualify to pursue their cause of action.

Furthermore, the presumption sought by T-Mobile is not permissible under the statutory provisions of Sections 201 and 202 of the Act.

Most strikingly, T-Mobile's proposal would impermissibly create a new threshold that has no statutory basis in the Communications Act. The requirements and obligations of Sections 201 and 202 of the Act apply to all common carriers, regardless of size or status. It is irrelevant whether a carrier is a monopoly provider, is one of two providers, or even one of dozens – that carrier is still subject to the mandates of Sections 201 and 202. Under these clear statutory mandates, the adoption of any presumption on the reasonableness of a carrier's conduct based solely on the number of carriers operating the same technology in a given geographic area is improper and should not be considered.

Additionally, T-Mobile's proposal runs counter to antitrust laws. Under the antitrust laws, the courts and antitrust agencies presume just the opposite, *i.e.*, that duopolies are anticompetitive absent extraordinary circumstances. The D.C. Circuit addressed the anticompetitive nature of duopolies in *FTC v. Heinz*, 246 F.3d 708, 713 (D.C. Cir. 2001). In that case, the D.C. Circuit evaluated a proposed merger of baby food suppliers that would reduce the number of competitors from three to two. The D.C. Circuit concluded that:

> The creation of a durable duopoly affords both the opportunity and incentive for both firms to coordinate to increase prices. . . . Tacit coordination is feared by antitrust policy even more than express collusion, for tacit coordination, even when observed, cannot easily be controlled directly by the antitrust laws. It is a central object of merger policy to obstruct the creation or reinforcement by

---

[8] / T-Mobile *ex parte* at 4.

[9] / *Id.*

[10] / T-Mobile *ex parte* at 4 – 5.

> merger of such oligopolistic market structures in which tacit coordination can occur.[11]

The D.C. Circuit then commented that it was not aware of any court ever approving a merger to a duopoly under similar circumstances.[12] If T-Mobile's position were accepted by the Commission, it would place an overwhelming and unnecessary burden on complainants to show that a duopoly is anticompetitive when the law is clear that duopolies are generally always anticompetitive.

- **T-Mobile's Proposals Ignore Established Statutory and Case Law**

If a complainant could overcome this initial hurdle, T-Mobile stated that the complainant should then be expected to make a *prima facie* case of discrimination under Section 202(a) "by showing that it seeks substantially the same roaming service arrangements under the same terms and conditions that the [defendant] made available to another party" but refused to make available to the complainant.[13] T-Mobile also proposed that, alternatively, the complainant could show that the roaming contract in question is not generally available to other similarly situated carriers. T-Mobile further stated that either such showing "must demonstrate that the complained-of activity harms consumers."[14] With these proposals, T-Mobile is recommending that the Commission set aside long-standing case law, as well as the statutory mandates of Sections 201 and 202, and replace them with even stricter requirements and burdens on potential complainants.

The law is clear that, under Section 202, the complainant must establish (1) that the services are "like"; and (2) that discrimination exists between the like services.[15] Once these have been established, the burden then shifts to the defendant carrier to show "that the discrimination is justified and, therefore, not unreasonable."[16]

The Commission and the courts have consistently held that that the appropriate test in determining whether services are "like" is whether the services in question are "functionally

---

[11] / *FTC v. Heinz*, 246 F.3d at 725 (citing 4 Phillip E. Areeda, Herbert Hovenkamp & John L. Solow, *Antitrust Law* ¶ 901b2, at 9 (rev. ed. 1998)).

[12] / *Id.* at 717.

[13] / T-Mobile *ex parte* at 5.

[14] / *Id.*

[15] / *MCI Telecommunications Corp. v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990); *See also Beehive Tel. Co. v. Bell Operating Cos.*, 10 FCC Rcd 10562, 10567, ¶ 27 (1995); *Graphnet, Inc. v. AT&T Corp.*, 17 FCC Rcd 1131, 1137, ¶ 16 (2002); *Total Telecommunications Servs., Inc. v. AT&T Corp.*, 16 FCC Rcd 5726, 5741, ¶ 33 (2001).

[16] / *Beehive Tel. Co.*, 10 FCC Rcd at 10567.

equivalent."[17] This inquiry, in turn, focuses on whether the services in question are "different in any material functional respect," with customer perception as the "linchpin" in making this determination.[18] Thus, as the Commission has held, not all differences between services are important; "instead, the differences must be functionally material or, put another way, of practical significance to customers."[19] According to the D.C. Circuit, "If 'customers regard[ ] the. . .service as the same, with cost considerations being the sole determining criterion,' the services are like."[20]

In an *ex parte* submission filed in this proceeding on September 25, 2006, Leap Wireless addressed the applicability of the "likeness" test to CMRS roaming as follows:

> This rulemaking proceeding is focused on "roaming," which, according to the Commission, "occurs when the subscriber of one CMRS provider utilizes the services of another CMRS provider with which the subscriber has no direct pre-existing service or financial relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call." Under that definition, the services that affiliated carriers, unaffiliated carriers, and MVNOs obtain (or seek to obtain) from other CMRS providers are functionally equivalent, because there is no material difference between those services from the subscriber's point of view.[21]

Rather than establishing that the service is "like" (*i.e.*, that it is not functionally different in any way of practical significance to customers) and that discrimination exists (*e.g.*, in price, the availability of the service, etc.), T-Mobile's proposal would require any carrier seeking relief under Section 202 to show that it is seeking substantially the *same* roaming service under the *same* terms and conditions as another party is receiving. This is a significantly greater burden demanding a significantly greater showing than the law currently requires.

In essence, the showing required by T-Mobile's proposal – as well as the "alternative" T-Mobile has suggested (*i.e.*, that the roaming contract in question is not generally available to other similarly situated carriers) – would place the burden on the complainant to establish that it is

---

[17] / *Id.*, ¶ 28; *See also Cellexis Int'l, Inc. v. Bell Atlantic Nynex Mobile Sys., Inc.*, 16 FCC Rcd 22887, 22892, ¶ 11 (2001); *Ad Hoc Telecommunications Users Comm. v. FCC*, 680 F.2d 790, 795-797 (D.C. Cir. 1982).

[18] / *Ad Hoc Telecommunications Users Comm.*, 680 F.2d at 796.

[19] / *Cellexis Int'l, Inc.*, 16 FCC Rcd at 22892 (quoting *Beehive Tel. Co.*, 10 FCC Rcd at 10567).

[20] / *MCI Telecommunications*, 917 F.2d at 39 (quoting *American Broadcasting Co. v. FCC*, 663 F.2d 133, 139 (D.C. Cir. 1988)) (alterations in original).

[21] / *Ex Parte* Letter of Leap Wireless International, Inc., filed Sept. 25, 2006, at 6.

similarly situated to other carriers receiving roaming service from the defendant. However, under the three-part analysis of Section 202 claims, the burden is on the *defendant* to show whether a carrier is "similarly situated" in support of the defendant's requirement to show that the complained-of discrimination is not unreasonable.[22] As the DC Circuit held in *MCI Telecommunications*:

> We have also made crystal clear (we thought) what the FCC must *not* examine when applying the functional equivalency test: "[c]onsideration of cost differentials and competitive necessity are properly excluded [from the likeness determination] and introduced only when determining whether the discrimination is unreasonable or unjust."[23]

Despite long-standing law to the contrary, T-Mobile is now seeking to inappropriately shift the defendant's burden to the complainant, thus further increasing the already substantial hurdles that a carrier must overcome in order to seek redress.

In addition, SouthernLINC Wireless strongly opposes any requirement that a complainant's *prima facie* case include a demonstration of "consumer harm" – a term that T-Mobile does not define. A demonstration of consumer harm is not required under the statutory language of Sections 201 or 202, nor has it ever been required. This omission does not mean that consumer harm is irrelevant; rather, it reflects the common sense understanding of Sections 201 and 202 that, when a common carrier engages in the unjust or unreasonable activities proscribed by these sections, these activities *inherently* harm consumers. It is for this reason that Congress made no mention – nor imposed any requirement – of a demonstration of "consumer harm" in Sections 201 or 202. Nor did Congress define "consumer harm" in the statute, since doing so would be superfluous. T-Mobile's position therefore adds layers of proof not required by Congress in the Act and unfairly shifts to the complainant the burden of proof on *all* elements of a discrimination claim.

Of equal significance, SouthernLINC Wireless observes that T-Mobile's proposal only addresses complaints of discrimination arising under Section 202. In doing so, this proposal fails to address the very real likelihood of roaming disputes arising not on the basis of discrimination, but on the basis of whether, under Section 201, the actual rates, terms, and conditions of roaming are unjust and unreasonable or whether certain types of roaming are being denied altogether. For example, this type of situation could arise where there are only a limited number of carriers using a particular air interface or a particular data technology (such as the EDGE, EvDO, or HSDPA/UMTS technologies based on the CDMA and GSM air interfaces). Such a situation is not hypothetical – the record of this proceeding contains multiple real-world examples of this

---

[22] / *See, e.g., MCI Telecommunications Users Comm.*, 917 F.2d at 39.

[23] / *Id.* at 39 (quoting *American Broadcasting Co.*, 663 F.2d at 139) (alterations and emphasis in original).

type of situation, including SouthernLINC Wireless' own experiences. Accordingly, a complainant should also be able to make a *prima facie* case that a carrier's rates are unjust or unreasonable under Section 201 by showing that the carrier's wholesale roaming rate is higher than either its best retail rate or average retail rate on a per-minute basis. Likewise, a complainant should be able to make a *prima facie* case that a carrier's denial of roaming services is unjust or unreasonable by showing that the parties use compatible technologies and that other carriers are roaming with the defendant carrier for the services requested.

Under both T-Mobile's proposals and the CMRS Roaming Principals – and in keeping with well-established precedent – once a complainant has made a *prima facie* showing of unjust or unreasonable roaming rates, terms, or conditions under Section 201 and/or unjust or unreasonable discrimination under Section 202, the burden would shift to the defendant to show that the complained-of conduct is reasonable. T-Mobile has suggested that the defendant could show the reasonableness of its conduct "through such factors as a lack of harm to consumers, differences in competitive circumstances, technical differences, or cost differences."[24]

In a formal complaint proceeding involving a wholesale, carrier-to-carrier transaction like roaming, the specific issue being adjudicated would be the harm to the carrier seeking service – which, as discussed above, is viewed under Sections 201 and 202 as harm to consumers as well.[25] To suggest, as T-Mobile does, that it is a *defense* that some other consumer (*e.g.*, a retail customer) may not be suffering from unjust and unreasonable rates or discriminatory treatment is both nonsensical and contrary to established law.

For the reasons discussed above, consumer harm can be presumed under the Act when a carrier shows the existence of unjust and unreasonable rates, terms, and conditions. While some of the other factors listed by T-Mobile, such as technical and cost considerations, could be considered as factors that might show that a carrier's roaming conduct is reasonable,[26] an evidentiary process will allow the specific facts and circumstances surrounding an individual complaint to be developed and each complaint can thus be decided on its individual merits.

---

[24] / T-Mobile *ex parte* at 5.

[25] / In fact, a substantial number of Section 201 and 202 cases involve the provision of or access to wholesale carrier-to-carrier services, where the harm alleged is to the complaining carrier. *See, e.g., MCI Telecommunications Corp. v. FCC*, 917 F.2d 30; *Beehive Tel. Co. v. Bell Operating Cos.*, 10 FCC Rcd 10562 (1995); *Cellexis Int'l, Inc. v. Bell Atlantic Nynex Mobile Sys., Inc.*, 16 FCC Rcd 22887, 22892, ¶ 11 (2001). In these cases, neither the courts nor the Commission address the issue of consumer harm, since harm to consumers would inherently result from the complained-of conduct.

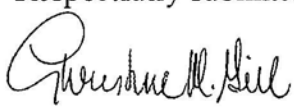
[26] / *See, e.g., MCI Telecommunications*, 917 F.2d at 39.

Conclusion

T-Mobile's proposals for revising the Commission's complaint process for roaming complaints, read together with the CMRS Roaming Principles, show that there is some agreement on certain key issues involving automatic roaming. Although some of T-Mobile's proposals should be rejected due to the insurmountable barriers they would erect to aggrieved carriers (as well as the statutory problems posed in light of the language and purpose of Sections 201 and 202), other proposals submitted by T-Mobile are in alignment with those advanced by numerous other CMRS carriers and therefore merit serious consideration by the Commission.

Specifically, SouthernLINC Wireless supports T-Mobile's proposal that roaming complaints be automatically placed on the "Rocket Docket," and also supports T-Mobile's proposed amendments to the Commission's formal complaint rules in order to accommodate roaming-related complaints. SouthernLINC Wireless also agrees that Commission staff should be provided appropriate decisional guidelines for roaming-related complaints. However, SouthernLINC Wireless believes that the necessary guidance and certainty can only be achieved through the adoption of a clear rule establishing straightforward "bright line" presumptions such as those set forth in the CMRS Roaming Principles. SouthernLINC Wireless is also opposed to the adoption of certain standards proposed by T-Mobile that would, in practice, make it virtually impossible for any carrier to bring a roaming dispute before the Commission for resolution. Overall, SouthernLINC Wireless believes that T-Mobile's proposals represent a positive step and looks forward to the opportunity to work further with other carriers and with the Commission to bring this proceeding to a resolution that will benefit US consumers and the CMRS industry.

Respectfully submitted,



Christine M. Gill

Counsel for SouthernLINC Wireless

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Michelle Carey
Bruce Gottlieb
John Branscome
Barry Ohlson
Aaron Goldberger
Fred Campbell, Chief, Wireless Telecommunications Bureau

CMRS Roaming Principles

Roaming services are an essential component of mobile telecommunications services and fulfill an important public safety role. Ensuring that consumers have near ubiquitous access to roaming services, no matter where they travel, is in the public interest. Access to roaming services is particularly critical for consumers who are underserved or who live in rural and remote areas with fewer competitive options. Access to roaming services fosters competition in the wireless market and encourages new entrants. Given the importance of roaming services, the FCC should adopt rules to facilitate automatic roaming for all wireless customers based upon the following principles:

- Carriers must provide in-bound automatic roaming (i.e., permitting another carrier's customers to roam onto its network) to any requesting carrier with a technologically compatible air interface. All services that a carrier is currently offering (e.g., voice, data, dispatch) must be offered to a requesting carrier with a technologically compatible air interface.

- Carriers must provide in-bound automatic roaming services under rates, terms and conditions that are just, reasonable and non-discriminatory. In this respect, the FCC clarifies that Sections 201 and 202 do apply to roaming services.

- Carriers must negotiate in good faith.

    - FCC involvement is required only if a complaint is filed.

- The §208 complaint process should be strengthened to ensure it is an effective avenue for redress. To do so the FCC should incorporate the following presumptions:

    - A reasonable rate presumption. FCC should adopt the presumption that a just and reasonable wholesale rate for roaming cannot be higher than the carrier's best retail rate or average retail rate per minute.

    - A technical feasibility presumption. If a carrier is already providing roaming service (data, voice, dispatch) to other carriers using the same air interface then the roaming service will be presumed to be technically feasible (shifting the burden of proving it is not technically feasible)

    - A rapid response mechanism. Because of the competitive nature of the wireless industry, complaints cannot be allowed to languish indefinitely. Therefore, roaming complaints will be placed on the Enforcement Bureau's Accelerated Docket under Section 1.730 of the Commission's Rules.